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THE TAXATION OF PROPERTY AND INCOME IN MASSACHUSETTS

SUMMARY

I. Taxation in Massachusetts in the seventeenth and eighteenth centuries, 1. — II. The period, 1800–1850, 5. — III. The critical period, 1850–1874, 7. — IV. Gradual disintegration of the general property tax, 19. — V. Attempts at stricter enforcement, 1908–1916, lead finally to change of the system, 32. — VI. An income tax proposed: constitutional amendment of 1915, 46. — VII. The income tax act of 1916, 50.

I

In principle the general property tax was established in Massachusetts by the well-known law of 1634 which provided that in all "rates and public charges" the towns should tax everyone according to his estate and with reference to "all other his abilities whatsoever." The first detailed tax law, enacted in 1646, established a system of taxation upon "visible estate" real and personal, supplemented by a tax upon incomes of laborers, artificers and others, which in time developed into a tax upon incomes not derived from property. With these levies upon estates and incomes went the poll tax which had existed in the colony from the very

beginning. The act of 1646, therefore, definitely established a system of direct taxation upon property, income, and polls, which continued in operation without fundamental changes until 1862, and for the most part lasted until the twentieth century.

The operation of this tax system in the seventeenth century has been exhaustively studied by Professor Day,[1] who finds that it was customary to levy upon polls from 35 to 40 per cent of the direct taxes imposed for colonial and local purposes. In some communities the proportion was frequently greater than this, sometimes rising to 50 and even 60 per cent of the tax levy. Property, therefore, paid but 60 or 65 per cent of the direct taxes, and sometimes contributed 50 per cent or less.

Until the very end of the century the property tax was confined to *visible* estates, which term, however, probably included money. In practice this meant that land, buildings, and live stock accounted for nearly the whole of the assessments. Since land values were low and there were few expensive buildings in the colony, the proportion of the taxes falling upon live stock was very heavy. Professor Day finds that such property often accounted for one-half, two-thirds, and even three-fourths of the whole assessment placed upon estates, with the result that personalty frequently paid a larger proportion of the taxes than did realty. It may be estimated roughtly that of every £100 of direct taxes levied in a representative Massachusetts town in the seventeenth century, some £35 to £40 was levied upon polls, and that the remaining £60 to £65 was contributed by real estate and live stock in proportions which varied but may not have been very un-

[1] E. E. Day, History of the General Property Tax in Massachusetts, 1630–1688. (Unpublished thesis, in Harvard University Library.)

equal.[1] Personal property other than live stock constituted in most towns an unimportant part of the assessment, and incomes usually were a negligible factor.

The eighteenth century brought new conditions which gradually wrought material changes in the practical operation of the tax system. The proportion of direct taxation falling upon polls slightly decreased, since it became the general rule to levy one-third of the direct taxes upon polls and two-thirds upon property. Peculiar conditions sometimes made the poll taxes considerably higher or a little lower than this figure, but in the average town conditions probably conformed pretty closely to the intention of the law.

The great change, however, was the advance of real estate to a commanding position upon the tax rolls. The frontier of settlement had been pushed forward into the Connecticut valley, and eastern Massachusetts was becoming a fairly populous and prosperous community. Land values were rising, and houses better than American architects ordinarily produced in the nineteenth century were becoming common. As a result, the assessed value of real estate steadily rose, and personal property became of much less relative importance. In 1792, the assessment placed upon realty was £713,600, that upon personalty was £144,400, while property " doomed " by the assessors, which was largely personalty, was assessed at £81,100. If we assume all the " doomed " property to be personalty, we may compute that personal property accounted for 24 per cent of the total assessment and real estate for 76 per cent.[2] Since one-third of the direct taxes was levied upon polls, we may compute that of every £100

[1] In Boston, for instance, Day finds that in 1676 real estate accounted for 62 per cent of the total assessment of property, while in 1687 personalty accounted for 53 per cent.

[2] See Wolcott's Report on Direct Taxes. State Papers, Finance, vol. i, p. 451.

of taxes levied in a Massachusetts town, £33⅓ fell upon polls, £50⅔ fell upon real estate, and £16 fell upon personalty, including income which was almost everywhere a negligible factor.

Wolcott's Report enables us to divide the £144,400 of property recorded as personalty into its component parts. Of this sum £66,300 represented live stock, £42,600 represented other tangible personalty, and £35,500 intangibles. What the £81,100 of "doomed" personalty consisted of, we can only conjecture; but we may believe that it was composed chiefly of merchants' stocks, money at interest and other intangibles, and perhaps incomes. In considering these figures it should be remembered that at this time property was placed upon the assessment roll at 6 per cent of its true value, with the exception of unimproved real estate, which was assessed at 2 per cent.

Money was, doubtless, included in the visible estates, for which inhabitants of Massachusetts were taxable in the seventeenth century. At the very end of that period money at interest is mentioned by the annual tax acts, and during the eighteenth century intangible property became subject to taxation. When corporations developed, their shares were taxable, like other personalty; but, as a gentle reminder to local assessors, the tax act for 1793 specifically mentioned bank stock. During the next decade shares of bridge or turnpike companies and other moneyed corporations received similar mention. The commercial development of the state was greatly increasing the amount and the importance of this class of property, and the growth of a considerable body of public securities at the same period tended to the same result. In 1790, Massachusetts had merchant princes whose fortunes were counted by the hundred thousands, and in some cases approached the

figure of $1,000,000. The money made in commerce soon overflowed into banking and manufacturing, and into bridge, turnpike, and canal companies, with the result that the amount of intangible personal property rapidly increased.[1]

II

From 1800 to 1850 the financial problems confronting Massachusetts were few and comparatively simple. When the Federal government in 1790 assumed the greater part of the state debt, the burden of state taxation was reduced to an almost nominal figure.[2] By 1850 conditions had somewhat changed, but the pressure of taxation was still comparatively light. In Boston the tax rate for that year was $6.80, and this figure was probably not far from the average for the state at large. In interpreting these figures it is necessary to consider the further fact that real estate assessments were undoubtedly at a lower percentage of the true value than they are at the present day. While the matter has not been fully investigated, such evidence as we have indicates that in the average city or town prior to 1860 realty was probably not assessed at more than 50 per cent of its true value.

Under such conditions an easy-going administration of the tax laws sufficed to place a substantial amount of personal property upon the assessment rolls. In Boston in 1794 over 57 per cent of the assessment appears to

[1] This period is being exhaustively studied by Dr. H. H. Burbank, and will be treated in his book dealing with the history of the general property tax in Massachusetts since 1775.

[2] I have treated this subject in my monograph upon The Finances and Financial Policy of Massachusetts, chs. 2–4. The local governments were as yet undertaking few new functions so that their expenses were comparatively light. The result was that the pressure of taxation was light and the general property tax met fairly well the requirements of the period. In Boston the tax levy of 1820 amounted to no more than $3.60 per capita, and the tax rate was but $3.50. In 1840, after Boston had been a city for eighteen years and had greatly increased her expenditures, the tax levy was but $6.30 per capita and the tax rate $5.50.

have consisted of personal property. In 1810 the proportion of personalty was over 45 per cent, in 1822 it was over 44 per cent, and as late as 1860 it was nearly 41 per cent. The per capita assessment of personal property in Boston was approximately $540 in 1804, and $635 in 1860. For the state at large no figures are yet available between the years 1792, when we have Wolcott's Report, and 1850, when we have the figures of the United States Census. In the former year, as we have seen, if the property " doomed " by the assessors is counted as personal, 24 per cent of the total assessment consisted of personalty. In 1850 the Census figures showed a total assessment of $551,000,000 of which nearly $202,000,000 was personal property, the percentage of personalty being 36.6. It appears, therefore, that between 1792 and 1850, at the time when intangible property first became an important factor in Massachusetts, the proportion which personal property bore to the total assessment rose from 24 to 36.6 per cent.

What proportion of the increased assessment of personalty consisted of intangibles and what proportion consisted of merchants' stocks, machinery, live stock, and the very important item of ships and vessels, has not yet been ascertained. It may be that intangible property accounted for only a small part of the increase; but so far as our present knowledge goes, we can say that there is no evidence that it was the growth of intangible property in Massachusetts which broke down the general property tax. Upon the contrary, during the period when intangibles became an important factor in the situation, the assessment of personal property showed both an absolute and relative increase. With low tax rates the assessors succeeded in reaching a sufficient amount of personal property to account for 40 per cent of the total assessments during the period.

An important change in the distribution of the whole tax burden occurred in 1814 when the proportion of direct taxes assessed upon polls was reduced to one-sixth of the total levies. In 1850 we may estimate [1] that of every $100 of local taxation, $16.67 was levied upon polls, $52.80 was levied upon real estate, and $30.50 was levied upon personal property and income, the latter still being a negligible factor. If these figures are compared with those computed for 1792, it will be seen that the proportion which real estate formed of the total assessment had slightly increased, and that the decrease in the levy upon polls was made up chiefly by the increase in the assessment of personal property.

III

The twenty-four years following 1850 were the critical period in the history of the general property tax in Massachusetts. The tax had met fairly well the requirements of the first half of the nineteenth century, but proved wholly inadequate for subsequent needs. All the evidence justifies the conclusion that it was the increase of public expenditures which caused the breakdown.

The growth of cities, the emergence of new public needs, the unusual demands of the civil war, and the period of public and private extravagance which continued until the panic of 1873, combined to produce an unprecedented increase in expenditures. The outlay of the state government was $566,100 in 1850, while in 1860 it had increased to $1,193,000, and in 1868 had risen to $5,159,000. Thereafter it decreased to some extent, but at the end of a period of severe retrench-

[1] If the bank tax, which yielded the state $354,700 in 1850, were added to the local taxes, the proportion of personal property in the total would be increased by perhaps six or seven dollars. But as we have no data concerning the taxes raised for local purposes, no accurate calculation can be made on this point.

ment stood at $3,907,000 in 1880. Local expenditures followed the same general course. For 1850 no data are available, but we know that in 1861 the taxes levied upon property in Massachusetts amounted to $7,145,000, and that by 1874 they had risen to $27,830,000. The total taxes of all descriptions levied in the Commonwealth amounted to $8,284,000 in the former year and to $33,674,000 in the latter; while the per capita tax burden had risen from $6.69 to $20.87.[1] To make the situation worse, both state and local debts had shown a portentous increase, so that interest and sinking fund charges were certain to complicate the financial problem of the future.

The only possible result was a sharp increase of tax rates. In Boston the rate advanced from $6.80 per $1000 in 1850 to $9.30 in 1860 and to $15.60 in 1874. In the entire state the average tax rate, which was $8.29 in 1861, was $15.18 in 1874. The strain of such high rates was greater than the existing system could possibly endure, and therefore taxation immediately became a " problem " in Massachusetts.

One of the first readjustments required in the tax laws was a reduction of the poll tax. Since 1829 the law had provided that one-sixth of the state tax should be assessed upon polls, and that the same proportion should be followed in local taxes, provided, however, that the total poll tax levy for city, town, and county purposes should not exceed $1.50. If one-sixth of the heavy taxes levied for state purposes during the civil war had been levied upon polls, and the assessments for local purposes had approximated $1.50, the aggregate poll taxes would have risen to high figures. Therefore in 1862 it was enacted that the aggregate poll tax for all

[1] These figures may be found in The Finances and Financial Policy of Massachusetts, pp. 46, 63, and 135.

purposes, state and local, should not exceed $2, with a possible exception in the case of highway taxes separately assessed. Even under this law the poll tax, which in 1861 had averaged $1.62, increased to $2.50 and $3.00 in many towns in 1864 and 1865; while such a rate as $4.25 was reported in one instance. For the entire state the average poll tax in 1865 was $2.11. With the tax limited in this manner, increases in local taxation thereafter fell wholly upon property; and the poll tax became a factor of decreasing importance.

The principal change that occurred during this period was the introduction of an extensive system of corporation taxes. In 1812, Massachusetts had imposed a tax of one per cent upon the capital stock of state banks, and twenty years later had levied a retaliatory tax upon the agents of foreign insurance companies chartered in states that taxed the agents of Massachusetts companies. The bank tax soon yielded a handsome revenue, and was the mainstay of the state's finances during the civil war. It seems to have been looked upon as a tax upon the privilege of issuing notes, since the shares of the banks remained taxable in the hands of the stockholders. The insurance taxes never produced enough revenue to make them of financial significance. Up to 1862 Massachusetts had made no fundamental departure from the general property tax; and, except for comparatively unimportant exemptions, all property was subject to local taxation.

But in the year just mentioned a law was enacted which exempted from taxation deposits in savings banks, and then imposed upon the banks themselves an excise tax of one-half of one per cent. Altho this rate was subsequently increased, then reduced, then increased, and finally restored to the original figure, it was always less than the average rate imposed upon other

property in Massachusetts; and as local tax rates increased, it finally fell to less than one-third of the average rate of taxation. It therefore established a separate classification for savings bank deposits, justified no doubt upon the theory that such property was entitled to special consideration, but marking none the less a deliberate departure from the principle of the general property tax. It also raised interesting and important constitutional questions.

The earliest tax laws of the colony of Massachusetts had been based upon the English system of local taxation. That system had been based upon the principle of equal, proportionable, and ratable taxation according to the abilities of the citizens, but had not always employed the same measure of ability.[1] The earliest Massachusetts tax laws provided in almost identical language for equal and proportionable rating of the inhabitants of Massachusetts, and selected visible estates as the measure of the citizens' contributions. It, therefore, naturally happened that the province charter of 1691 contained a provision authorizing the general court to levy " proportionable and reasonable assessments, rates, and taxes." What the word " proportionable " meant to the person who inserted it in the charter, we do not know; but we do know that the word was never so construed as to prevent the province from classifying property for taxation. On the contrary, the provincial tax laws repeatedly classified property and continued to do so down to the time of the revolution. Real estate was usually required to be assessed at six times the annual income. Live stock was assessed at arbitrary valuations fixed by law, and other personal

[1] Cannan's History of Local Rates in England gives sufficient evidence concerning the sources upon which the authors of the earliest Massachusetts laws drew.

property practically according to the judgment and discretion of the assessors.

The constitution adopted by Massachusetts in 1780 took over from the provincial charter the provision that the general court should have the power to levy " proportional and reasonable assessments, rates and taxes." If it had stopped there, it might never have been so construed as to prevent classification of the objects of taxation, because the colony and province had always levied excise and import duties, and the state continued to do so. It would probably have been evident to any court that the framers of the constitution had not intended to invalidate the existing system of excise and customs taxes, and it is therefore unlikely that the constitutional requirement that taxes shall be " proportional " would have been construed so strictly as to make excise and customs duties unconstitutional. But after conferring upon the general court the same taxing power that the province of Massachusetts had always exercised, the framers of the constitution inserted an additional provision authorizing the levy of " reasonable duties and excises." This action may have been due to a fear or belief that, without specific authorization of duties and excises, the general court might be unable to levy such imposts. But this caution was probably unnecessary. The taxation system of Massachusetts had never been proportional in any mathematical sense, and it had always included excise and customs duties, to which it would have been practically impossible to apply any requirement of proportionality. The excise clause, therefore, was probably unnecessary, and could have no other effect than to oblige the courts to find a reason for the inclusion of the word " proportional " in the clause relating to direct taxes and for its exclusion from the clause relating to duties and excises.

Whatever the framers may have intended, the second tax act [1] enacted after the adoption of the constitution, provided that all property except unimproved lands should be assessed at 6 per cent of its real value, and that such lands should be assessed at 2 per cent. This was obviously a classification of property, and it continued to be the law of the Commonwealth until its repeal in 1828 without any question being raised concerning its constitutionality. Another law of 1781[2] levied a duty upon coaches, chariots, and carriages, and required the inhabitants of the Commonwealth under oath to make returns of such property to the local assessors. This was in everything except name a direct tax upon property, and could not have been upheld as an excise or duty except under such a broad construction of those terms as to render meaningless the distinction between the taxing power and the excise power. It also passed without question.

The meaning of the word " proportional " was considered by the Supreme Court for the first time in the case of Portland Bank *v.* Apthorp (12 Mass. 252), which involved the constitutionality of the tax levied upon state banks in 1812. The court upheld this tax as an excise, but took occasion to say that it could not be sustained as a tax because it was not proportional. Altho this was a mere dictum, it inevitably carried great weight fifty years later when the next case arose; and yet if the dictum of the court was correct, it followed that the province of Massachusetts had never had anything remotely resembling a proportional system of taxation, and that the legislature of the state only a year after the adoption of the constitution had established an unconstitutional classification of real estate which was still in force, and under the guise of an excise had levied

[1] Ch. 16 of 1781. [2] Ch. 17 of 1781.

an unconstitutional tax upon certain other classes of property.

When the savings bank tax came up for consideration, the court, following the reasoning of Portland Bank *v.* Apthorp, upheld it[1] as an excise or duty on the franchises of the banks, even tho, unlike the bank tax of 1812, it was in lieu of local taxation of the deposits. The earlier decision had merely upheld an excise that was in addition to the property tax. The latter, however, made it possible for the legislature, wherever it could levy a valid excise, to exempt from local taxation the property which in effect had been excised. The door was opened, therefore, for a considerable extension of the excise power, and the legislature soon took advantage of the opportunity. Another important effect of the decision was to commit the court to the general line of reasoning followed in the earlier case, and to make it probable that, if the question ever arose, the dictum laid down in Portland Bank *v.* Apthorp would become a decision to the effect that a tax, in order to be constitutional, must be proportional in the strictest sense of that word.

Cases involving this question were not long in coming before the court, and it was presently held that the constitution required taxes on property to be so laid that, "taking 'all the estates lying within the Commonwealth' as one of the elements of proportion, each taxpayer should be obliged to bear only such part of the general burden as the property owned by him bore to the whole sum to be raised."[2] Thus the tax clause of the constitution was finally interpreted in such a manner as to make it prescribe strict uniformity in taxation.

[1] 5 Allen, 428, 431, and 433.

[2] Oliver v. Washington Mills, 11 Allen 275. See also 12 Allen 298 and 312; 118 Mass. 386; 133 Mass. 161; 134 Mass. 424; 195 Mass. 607.

In 1864, the general corporation tax was enacted, and, like the savings bank tax, was sustained by the court as a valid excise. As is well known, it left the real estate and machinery of corporations subject to local taxation, and then imposed upon corporations a franchise tax which was to be assessed upon the so-called " corporate excess," or the amount by which the value of the capital stock exceeded the value of the real estate and machinery locally assessed. As the shares of the corporations were thereafter exempt from local taxation and the corporation tax was administered by the state, the law of 1864 introduced another radical change in the tax system of Massachusetts. But since the rate of taxation on the corporate excess was the average rate levied upon property in the Commonwealth, the law involved no departure from the principle of the general property tax, and in this respect differed radically from the tax on savings banks. Except for the arrangement by which double taxation of the stock and of certain tangible property of corporations was avoided,[1] the only real change wrought by the law of 1864 was that thereafter the state dealt directly with corporations and the stockholders were exempted from local taxation. The change effected, therefore, was chiefly of an administrative character, and there was no intention that corporations should pay either more or less taxes than the general mass of property subject to local taxation.

The establishment of the national banking system was followed by the conversion of state into national banks, and this required changes in the tax law. The final outcome was the establishment in 1873 of the present tax upon the shares of national banks, which, being

[1] Manufacturing corporations had been relieved from double taxation in 1832 by a law (ch. 158 of 1832) which provided that, in assessing the stock of such corporations, the local assessors should make a suitable deduction for the value of real estate and machinery already taxed.

levied at the local rates of taxation, results theoretically in taxing banks in the same manner as other property. In 1874, therefore, Massachusetts was collecting from the savings bank, the general corporation, and the national bank taxes $4,875,000 of revenue, which was over seven times the revenue derived from the old bank tax in 1861. The system had begun to be diversified, but except in the case of savings banks no departure had been made from the principle of the general property tax.

Without doubt the new taxes were more effective in reaching corporate property than the old methods of local assessment, so that perhaps the greater part of the revenue derived therefrom in 1874 represented an increase of financial resources. But this increase had not been sufficient, as we have seen, to prevent a rise of local tax rates under which conditions were rapidly going from bad to worse.

Boston was probably the first and also the chief sufferer. Mr. Thomas Hills, an able and determined advocate of the general property tax, was made one of the principal assessors in 1865, and in 1866 became chairman of the board. He increased greatly the efficiency of the assessing department, and inaugurated a vigorous search for taxable property under which Boston valuations rapidly increased. In 1860, the real estate of the city had been assessed at $163,891,000, and the personal property at $112,969,000. In 1865, these figures had been increased, respectively, to $201,628,000 and $170,263,000. By 1870, Mr. Hills had raised the real estate assessment to $365,593,000 and the personal to $218,496,000; and in 1872, had raised the former to $443,283,000 and the latter to $239,440,000. Account must be taken, of course, of the annexation of Roxbury and Dorchester, which added materially to the total

valuation; but even when this is done, the results secured by Mr. Hills were sufficiently striking.

But things were not working out as expected because personal property was rapidly migrating from Boston. Removals to the suburbs had been going on for many years, as is evidenced by the fact that before the middle of the eighteenth century it was necessary to amend the tax laws by providing that merchandise employed in any city or town should be taxable in that city and not at the domicile of the merchant. But under Mr. Hills there ensured a veritable hegira under which the attractive surburbs of Boston were rapidly build up at the expense of the city's tax rolls. The most striking case was that of Nahant, which in 1865 had assessed $513,000 of real property and $12,710 of personal, its tax rate standing at $15 per $1000. In 1870, however, thanks to Mr. Hills, its realty was assessed at $985,000, and its personalty at $4,160,000, while its tax rate had dropped to $2.50 per $1000. Between 1869 and 1873 not less than $13,900,000 of taxable personal estate was removed from Boston to eight suburban towns and to Newport, Rhode Island. Naturally enough, in time, such removals more than offset the diligence of Mr. Hills and his minions. The assessment of personal property reached high water mark in 1874 when it stood at $244,554,000. Thereafter it steadily decreased until it reached low water mark in 1879 at $184,545,000. But even in 1874 Mr. Hills had failed to increase the proportion of the taxes paid by personal property. In 1860, personalty constituted over 40 per cent of the total assessment, and in 1865 formed even a larger percentage. But in 1874, altho the total personal assessment had increased by some $74,000,000, the assessment of real estate had been raised 175 per cent, with the result that personal property formed less than 31 per cent of the total assessment.

In the entire state, as we have seen, personal property had constituted over 36 per cent of the local assessments of $551,000,000 in 1850. By 1874, however, it accounted for 29.6 per cent of the total assessment of $1,831,600,000. Allowance should be made for the fact that the savings bank, the general corporation, and the national bank taxes had removed a large amount of property from the category of " taxables," but only a small proportion of such property had ever been placed upon the assessment lists, and therefore the corporation taxes made comparatively little difference with the local assessments. In 1861, for instance, the deposits in the savings banks of Massachusetts amounted to $44,785,000, and of this sum the local assessors had taxed only $9,655,000. No similar comprehensive data concerning local taxation of the stock of Massachusetts corporations and of national banks are available; but in 1864 when, under the operation of the general corporation tax, the shares of Massachusetts corporations were exempted from taxation, the local assessments upon personal property decreased only from $343,500,000 to $324,600,000. In 1873, also, when the bank tax went into operation, the local assessments upon personal property decreased from $565,294,000 to $537,388,000. While, therefore, the total assessment of personal property for local taxation in 1874 would have been somewhat larger but for the changes wrought by the new corporation taxes, there had been a gradual shifting of taxation from personalty to real estate. Even if we estimate the reductions caused by the corporation taxes at the very generous figure of $70,000,000, there would still remain a shrinkage of some 2 per cent in the proportion which personal property bore to the total local assessments. For a time, however, this tendency was probably offset by the fact that the new corporation

taxes succeeded in reaching taxable values which would have eluded local assessment.

Since the poll tax was now fixed at what was practically a uniform charge of $2.00, the burden of taxation had shifted very greatly from polls to property. In 1874, polls were assessed for $877,700 in a total of $33,556,000, or for no more than 2½ per cent, which contrasts strikingly with the proportion of 16⅔ per cent established by the law of 1814.[1] The taxes paid by corporations amounted to $4,875,000 in 1874, and constituted 14½ per cent of the total. Local taxes upon personal property amounted to $8,229,000, or 24.6 per cent; and those assessed upon real estate were $19,573,000, or 58.4 per cent. Thus it appears that the reduction in the proportion of the taxes falling upon polls had been made up by the new corporation taxes; polls and corporations were paying in 1874 fully 17 per cent of the total taxes, whereas polls were required to contribute 16⅔ per cent under the law of 1814, and somewhat less than that under the law of 1829. But the corporation taxes were in effect taxes levied upon property, so that what the figures really show is that the proportion of the total taxes falling upon property had increased from 83⅓ per cent in the early part of the nineteenth century to 97½ per cent in the year 1874.

If we assume that the whole of the corporation taxes were levied in respect of personal property,[2] and therefore combine them with the taxes levied locally upon

[1] Of course the limitation placed by the Act of 1829 upon the local levy on polls tended to reduce appreciably the proportion of the total taxes falling upon polls, but up to 1850 the increase in the amount of taxes levied had probably not been sufficient to reduce the poll tax to a negligible factor.

[2] In fact some part of the general corporation tax represented real estate values, since, under a decision of the Supreme Court, the right of way of railroads and some other classes of public service corporations is exempt from local taxation. This decision had relieved such property from taxation up to 1864, but after that it merely increased the taxable corporate excess upon which the general corporation tax was levied. See Quarterly Journal of Economics, vol. xxi, pp. 185 and 218.

personalty, we find that the total contribution of personal property was $13,105,000, or 39.1 per cent of all the taxes levied in the Commonwealth. This left 58.4 per cent of the total taxes to be paid by real estate. Compared with 1850, therefore, we find that the contribution of personal property to the total public revenue, state and local, had increased to 39.1 per cent, while the contribution of real estate had increased to 58.4 per cent.

IV

Following the critical period which ended in 1874, came thirty-three years of comparative calm during which disintegration of the general property tax gradually and quietly continued. In 1874, dissatisfaction with the working of the tax laws led to the appointment of the first special commission to investigate the subject. This commission was composed of able men and submitted in January, 1875, a report that is replete with information. It was, however, dominated in its thought by Mr. Hills, who seems to have been the most influential as well as the most active member. The report recognizes existing evils, but does not understand their cause. It assails vigorously the proposal, made by the New York tax commission of 1871, to exempt personal property from taxation, and recommends merely changes in various details of the tax laws. For the evils attending the taxation of personal property the commission could make no more hopeful recommendations than that certain changes be made in the provisions of the law relating to offsets for indebtedness and the matter of domicile.[1] It was unfortunate for the Com-

[1] Report of the Commissioners Appointed to Inquire into the Expediency of Revising and Amending the Laws Relating to Taxation and Exemption, 101, 121. H. Doc. 15 of 1875.

monwealth that its tax laws could not be radically altered in 1875, but the principle of the general property tax was undoubtedly approved by all but a small minority, and that minority had little more to propose than exemption measures designed to relieve certain kinds of personal property from taxation. All things considered, it seems probable that Mr. Hills and his associates voiced very faithfully the prevailing opinion of the state.

In the years that followed, discussion of tax problems was confined principally to the subject of double taxation. An organized effort was made to bring about the exemption of mortgages secured by Massachusetts real estate; and this was practically accomplished in 1881, when the present law upon that subject was enacted. Under that act a note secured by a mortgage of taxable real estate in Massachusetts is exempt from taxation as personal property; and the interest of the mortgagee in the real estate is taxable to him as real estate in the place where the land lies, while the mortgagor is taxable only for his equity in the property. Since, however, the law does not prohibit contracting out, mortgages invariably provide that the mortgagor shall assume all taxes; and the practical result is that real estate is taxed to the mortgagor at its full value, while the mortgage note is exempt. This law had the effect of exempting from taxation about $48,000,000 of mortgage debts reported as assessed for taxation in 1881. But the assessment of personal property throughout the state decreased by only $3,600,000 in 1882, and the following year it was $6,900,000 larger than it had been before mortgages were exempted.[1]

[1] These figures, as well as those given above concerning the operation of the corporation taxes, may be found on pp. 36–38 of the Report of the Commission on Taxation of 1907.

Advocates of the general property tax interpreted these figures as meaning that the loss of $48,000,000 of taxable mortgages was offset by the natural increase of other personal property, and reasoned as if the assessment for 1883 might have been not $6,900,000 but $54,900,000 greater than the assessment for 1881 if mortgages had not been exempt. In fact, however, things would not have worked out that way. The exemption of mortgages nominally relieved $48,000,000 of personal property from local taxation. But, in reality, very few of the owners of such property had previously been assessed for their entire personal estates as the law directed, or had made returns of their taxable property. Except in cases where a person's property consisted largely of mortgages and he could therefore make a return to his assessors that reduced his taxable personalty below the amount for which he was assessed in 1881, tax payers who had been " doomed " for a given amount of personal property in 1881 had no interest in coming forward in 1882 with statements of their taxable personalty. They were presumably assessed for as much personal estate as in 1881, and therefore received no benefit from the mortgage exemption. The situation was like that which developed later when, in order to encourage forestry, new plantations were exempted from taxation for a stated period of years. This exemption was of absolutely no benefit to the average farmer because his farm was usually assessed for somewhat less than it was worth and the assessors could add to the rest of the farm all that they were obliged to take off from the plantation. We are not to suppose, therefore, that, if mortgages had not been exempted in 1881, the assessment of personal property in 1883 would have increased by $54,900,000 instead of $6,900,000 as it actually did.

After 1881 few changes in the tax laws occurred for many years. Until 1906, indeed, the only significant development was the introduction, in 1891, of a tax upon collateral inheritances and successions. In point of fact, tax legislation in Massachusetts was in a state of deadlock.

Advocates of change, who were increasing in numbers, labored to secure the exemption of foreign corporation stocks, and sometimes urged the total exemption of all intangible property. Upon the other hand, the assessors of the state, who numbered considerably more than 1000, had been organized by Mr. Hills and others into a state-wide association which was able to offer determined resistance to any and all exemption measures.

Advocates of the existing system proposed various measures to make the tax laws more effective, of which the most important were the appointment of assessors by some state authority and the taxation of personal property at a uniform rate which should be the average imposed upon real estate subject to local taxation. Either of these measures would have wrought havoc to the state, since the time had passed when it was possible to enforce the taxation of personal property at the prevailing local rates or at an average state rate. Such taxation would have meant confiscation of one-third or one-fourth of the tax payers' incomes, and would have led to wholesale removals of property from Massachusetts. As things stood, the tax laws resulted in what was aptly described as a "system of confiscation tempered by favoritism." The legislature was not disposed to grant further exemptions that might increase the burdens falling upon taxable property; and, upon the other hand, it probably realized that the existing laws were not capable of strict enforcement, and therefore was not disposed to adopt the drastic measures favored by the assessors.

In 1893, a joint special committee of the legislature was appointed to revise the laws relating to taxation; and the following year reported against radical changes in the taxation of property.[1] But conditions were going from bad to worse, so that in 1896 a special commission was appointed to inquire into the expediency of revising the tax laws. The following year this commission submitted a noteworthy report which grappled squarely with the problem confronting the Commonwealth. It investigated searchingly the practical operation of the existing system, and recommended that intangible property be exempted from taxation. It realized, however, that a substitute or substitutes should be found for the tax upon intangibles, and therefore recommended that the inheritance tax should be extended to direct inheritances, and that a habitation tax should be introduced which should be levied upon house rentals in excess of $400.[2]

Altho this plan provided substitutes for the existing tax upon intangible property, the legislature was not ready for radical departures from the existing system, and therefore the recommendations of the commission bore no immediate fruit. But the report effectively exposed the evils of the existing system, and pointed out their cause. It therefore served as the starting-point for subsequent discussion, and proved to be a document of great educational value. In 1906, another joint-special committee on taxation was appointed which recommended no radical changes in the property tax but advocated the taxation of direct inheritances, which

[1] Sen. Doc. 9 of 1894. The above statement relates to the majority of the committee. Minority reports favored the exemption of stock of foreign corporations and the exemption of state and municipal bonds.

[2] Report of the Commission Appointed to Inquire into the Expediency of Revising and Amending the Laws of the Commonwealth Relating to Taxation, 120 (Boston, 1897). The Commission also recommended that the state should retain in its treasury the revenue from the general corporation tax, and should then assume county expenses.

was finally carried into effect by an act of 1907.[1] A minority of the committee, reverting to the recommendations of the commission of 1896, advocated the exemption of intangible property from taxation but proposed no substitute.

Meanwhile, the general property tax was steadily disintegrating and producing conditions which were certain to lead ultimately to revision of the tax laws. Public expenditures, which had greatly declined during the period of retrenchment following 1874, were again upon the increase. The total taxes of all descriptions levied in the Commonwealth had decreased from $33,674,000 in 1874 to $25,714,000 in 1879, but by 1890 they had risen to $39,731,000, and by 1905 had reached the imposing total of $72,121,000. The per capita tax burden, which in 1874 had been $20.87, in 1905 was $24.01, and local tax rates were again increasing. From 1874 to 1879, during the period of enforced economy, the average tax rate in the state had declined from $15.51 per $1000 to $12.78. During the next fifteen years the average hovered around $15, but by 1900 it had risen to $16.14, and in 1905 it stood at $17.25. Under such conditions the evils which were serious enough in 1874 were gradually becoming intolerable.

One result of the heavier pressure of taxation was an increase in real estate valuations, especially in the cities. The mere desire to obtain revenue without undue increase of tax rates would have led, in any event, to somewhat higher valuations; but this tendency was increased by the operation of the law of 1875 limiting city debts, and that of 1885 limiting city tax rates. Under these acts many cities were obliged to increase real estate valuations in order to provide the necessary margin for loans and to keep tax rates within the

[1] Report of the Joint-Special Committee on Taxation (Boston, 1907).

specified limit. If this had resulted merely in changing the old-fashioned practice of valuing property at " about " one-half or two-thirds of what it was worth, it would have been a matter for congratulation. But in some cities it finally resulted in valuations so high as to be clearly excessive. There are today within the metropolitan district not a few municipalities in which it is difficult to sell real estate for its assessed valuation and transfers are frequently made at much lower figures.

Tangible personal property was seriously affected by the high rates of taxation, but in many cases had a comparatively easy method of escape, namely, incorporation. Merchants and manufacturers who found themselves more heavily taxed upon their goods, wares, or merchandise than their competitors in other states could incorporate under the laws of the Commonwealth and come under the general corporation tax. Under this tax, real estate and machinery remained subject to local taxation, and the rest of the property of corporations was supposed to be fully reached by the tax which the state levied upon the so-called " corporate excess." In practice, however, it developed that whereas an individual or a firm was taxable upon all property without deduction of debts except against the item of credits, the corporation was able to deduct the whole of its indebtedness from its assets taxable under the corporation tax. This circumstance, with others, brought it about that in 1902 the manufacturing and mercantile companies subject to the corporation tax owned merchandise valued at $143,604,000, and had a taxable corporate excess of no more than $104,238,000. It is clear, therefore, that the effect of the corporation tax was even at that time to enable incorporated companies to reduce the tax upon their merchandise, or at any rate to reduce it below what it would be if the local assessors assessed

it at its true value. In 1903, a maximum limit was placed upon the corporate excess, which had the effect of enabling many concerns to secure a further reduction of their taxes. While in individual cases the corporation tax was fully as heavy as the local tax upon unincorporated enterprises, and in some cases even heavier, there can be no doubt that, upon the whole, manufacturing and mercantile concerns found incorporation an easy method of escape from increasing burdens of local taxation.[1] In extreme cases it was possible to arrange matters so that an incorporated mercantile concern secured exemption from local taxation upon its merchandise, and then, after deducting its debts, had no corporate excess to be taxed by the state.

Other kinds of tangible personalty did not fare so well. Live stock is employed in an industry where incorporation is highly uncommon. Machinery is expressly excepted from the operation of the corporation tax, and is very heavily taxed in some localities. In textile centers it sometimes forms a very large percentage of the total valuation, as may be seen by looking at the assessments of personal property in such cities as Fall River and New Bedford.[2] In some cases it is supposed that manufacturers and assessors have working agree-

[1] The operation of the tax upon the corporate excess of manufacturing and mercantile companies is so complicated that it cannot be adequately treated in this paper. I may refer to my article upon the taxation of corporations in Massachusetts, published in the Quarterly Journal of Economics for February, 1907. The subject has been fully discussed in recent annual reports of the tax commissioner and in a special memorandum prepared for the legislative committee on taxation in May, 1916 (H. Doc. 2133 of 1916).

[2] Of a total valuation of $106,691,000 in 1915, the personal property of Fall River accounted for $42,707,000, or slightly over 40 per cent. In New Bedford, in the same year, out of a total valuation of $111,346,000, personal property accounted for $41,845,000, or approximately 37 per cent. These percentages are to be compared with an average of about 25 per cent in the total assessment in the state. Fall River and New Bedford do not tax very large amounts of intangible personal property, so that it is probable that the greater part of the taxable personalty in those cities consists of machinery.

ments under which machinery is assessed at a certain proportion of its actual value, and in other localities it is probable that machinery is taxed upon something less than a full valuation. But, upon the whole, it is reasonable to conclude that machinery is very heavily taxed in Massachusetts, and probably more heavily than in most other states.

Intangible personalty found several avenues of escape. In the first place, it tended more and more to leave communities where tax rates were high, and to concentrate in a number of attractive residential towns where taxpayers could virtually fix their own assessments. Between 1871 and 1891 not less than $75,000,000 of personal estates assessed in Boston through the diligence of Mr. Hills were removed to fifteen favorite towns. In the former year these towns had assessed $26,750,000 of personal property; in the latter their personal assessments had advanced to $52,558,000 — an increase of $25,808,000. Even if we assume that during the interval there had been no increase of personal property except the $75,000,000 gained by the removal of certain taxpayers from Boston, it would appear that the local assessors had taxed but one-third of these estates. In 1882, one town received an estate assessed in Boston at $800,000, and in the following year increased its assessment of personal property by no more than $281,000, but was able nevertheless to reduce its tax rate from $11 to $7 per $1000.[1]

In this connection it should be noticed that the method which the state followed in distributing among the cities and towns the revenue from the corporation and the bank taxes tended still further to give taxpayers the whip hand over the assessors. The general principle was to divide this revenue according to the residence of

[1] See Report of the Commission on Taxation (1908), pp. 45–46.

the stockholders;[1] and this brought it about that, when a wealthy taxpayer changed his residence, the town to which he removed received an increased share of the corporation and bank taxes. The result was that assessors knew that strict enforcement of the tax on intangible property would not only lead to the removal of such property to some other jurisdiction, but would decrease the amount of corporation and bank taxes received from the state treasury.

As years passed, the distribution of intangible property, and of the corporation and bank taxes, became more and more favorable to the wealthy towns. In 1865, before the process of concentration had begun, the fourteen wealthiest towns had derived a revenue of $6.87 per capita from local taxes on personal property and the corporation and bank taxes, while in the rest of the state the revenue from these sources amounted to $5.81. Twenty years later these fourteen towns were receiving $14.28 per capita, while the average for the rest of the state had fallen to $4.48. In 1905, the revenue of the fourteen towns had increased to $24.01 per capita, while that of the rest of the state amounted to $5.35, a trifle more than the figure for 1885 but materially less than the amount received in 1865. Somewhat similar conditions can doubtless be found in other states and countries, but it is probable that the student of taxation would have difficulty in finding elsewhere such extreme concentration of taxable resources as was gradually brought about in Massachusetts after 1865. The only possible result was the creation of inequalities by which the rates of taxation in the cities

[1] In 1898, the first departure from this principle was made when it was provided that the tax paid by street railroads should be distributed among cities and towns where the tracks were located. Subsequently, the distribution of the tax on other corporations was modified in the interest of the industrial towns where such enterprises were located.

and industrial towns were greatly increased, while they were lowered to almost nominal figures in a handful of wealthy communities.[1]

But overburdened taxpayers had still another method of escape; they could change their investments. Prior to 1862 this opportunity had not been open to them, since practically every form of investment was taxable. But when savings deposits were exempted from taxation, it was possible for people of means to make increased use of the savings banks. That this was done almost from the outset, there can be little doubt;[2] and it is certain that no small part of the very large deposits of Massachusetts savings banks today are held by people of means. Another door was opened by the great increase of the Federal debt during the civil war, which supplied investors with upward of two billions of non-taxable securities. The establishment of the corporation tax in 1864 placed the stocks of Massachusetts corporations in the list of so-called non-taxables. At first this may not have affected the situation, but in time there was created an artificial demand for tax-exempt stocks which were bought in large quantities by trustees and some others who were not in a position to change their domicile and could not well avoid making returns of personal property. The exemption of mortgages in 1881 created another class of untaxed investments, so that altogether a rather wide range of opportunities was open to persons acquainted with the provisions of the law.

In many cases untaxed securities were bought for permanent investment, so that no evasion of the tax laws was either contemplated or practised. But it was

[1] This subject was first carefully studied by the Tax Commission appointed in 1896. See Report 63–68.

[2] See the Report of the Tax Commission appointed in 1874, p. 61 et seq.

now possible to invest temporarily in non-taxables for the purpose of escaping assessment upon taxable securities. This could be done only a day or two before the date of assessment in any year, and there developed a regular spring demand for securities that could be held over assessment day and then returned to their former, — perhaps one might say actual — owners. In other cases the practice was different but the result the same. Comparatively few investors ordinarily made returns of their personal property, and intangibles were usually taxed by " doomage." This meant that assessors would begin with a small assessment, and then, if the taxpayer did not make a declaration of his property, would subsequently increase it. In time the assessment might reach a figure that would compel the taxpayer to seek relief, and this could be had by shifting his investments from taxables to non-taxables until he could make a full return of his personal property under oath. Such a statement would probably satisfy the curiosity of the assessors for a number of years, so that after making it the taxpayer could at the first favorable opportunity sell his non-taxables and reinvest in taxable securities. There has probably been comparatively little downright lying in the taxation of personal property in Massachusetts; perjury is an ugly thing, and the law did not make it necessary. Intangible property nevertheless managed to evade assessment, and could do so in many cases without change of the taxpayer's domicile.

The next result was that personal property paid a constantly decreasing proportion of the local taxes. In 1907, out of a total local assessment of $3,512,000,000 in the state of Massachusetts, personal property accounted for no more than $766,600,000, or 21.8 per cent; whereas in 1891 it had constituted 25.2 per cent of the total valuation, and in 1871 had constituted 33.8 per

cent. At the end of this period it can be estimated that about half of the personal property actually taxed consisted of intangible personalty.[1]

In the distribution of the total burden of state and local taxation some changes had occurred since 1874. In 1907, polls were assessed for $1,758,000 of taxes, or 2.4 per cent of the entire amount. The tax, however, was not so easy to collect as in former years, and the actual contribution made by polls was somewhat less than the percentage just stated. Since 1874 the liquor license tax had come into operation, and this, with some minor business taxes, amounted in 1907 to $3,453,000, or 4.7 per cent. The collateral inheritance tax introduced in 1891 now yielded $772,000, or about one per cent of the total. The corporation taxes amounted to $9,761,000, or 13.2 per cent. The taxes levied locally upon personal property stood at $12,386,000, or 16.8 per cent; while those levied upon real estate amounted to $45,794,000, or 61.9 per cent. Comparison with the figures for 1874 shows that polls were assessed in 1907 for substantially the same proportion as in 1874, that personal property and corporations accounted for 30 per cent of the total against 39 per cent in the former year, and that real estate paid 61.9 per cent of the total taxes against 58.4 per cent at the beginning of the period. The net result was that the proportion of the taxes paid by personal property and corporations had decreased by some 9 per cent, and that this had been made up by business and inheritance taxes, which now contributed 5.7 per cent, and by an increase in the real estate taxes of something more than 3 per cent.

A new chapter in the history of taxation in Massachusetts opened in 1908. In the previous year the

[1] See Report of Commission on Taxation (1908), pp. 40 and 67. Compare also the data found on pp. 50–51 of the Report of the Commission of 1896.

inheritance tax was extended to direct inheritances, and this brought the whole property of inhabitants of the state under review by the tax commissioner's department. Up to that time the local assessors had not infrequently gained information from probate returns. But since no tax was imposed upon direct inheritances, it was often possible for executors to avoid disclosing the amounts of probated estates, a request from all the heirs that no inventory be filed being sufficient to accomplish this end. With a direct inheritance tax in operation it was no longer possible to avoid filing inventories, and this fact alone would have altered materially taxation conditions in the Commonwealth.

V

Another law enacted in 1908 hastened the inevitable crisis. The tax commissioner, in 1898, had been given certain supervisory powers over the local assessors,[1] and thus the first step had been taken toward the establishment of central control over the assessment of property. The commissioner, however, was given but a single assistant to carry on the work of supervision, and there was no direct inheritance tax which enforced the filing of inventories of all estates; so that prior to 1908 his supervisory power had not been effective enough to alter materially the situation. But in that year a law was enacted [2] by which the powers of the tax commissioner were extended, and he was authorized to appoint three supervisors of assessors to assist him in the performance of his new duties.

The act stopped short of authorizing him directly or through the supervisors to revise local assessments, and merely authorized him to direct the local authorities to

[1] Ch. 507 of 1898.

[2] Ch. 550 of 1908.

assess property in the manner prescribed by law. In case local assessors failed to comply with such directions, the commissioner could merely notify the mayor of the city, or the selectmen of the town, of such failure, a provision which becomes almost humorous when one recalls that in many of the towns the selectmen are also the assessors. The tax commissioner was indeed authorized to cause an assessor guilty of any violation of law for which a penalty was imposed, to be prosecuted in the county courts, but for various reasons this did not meet the needs of the case. It therefore happened that in some instances the local officials refused to obey the directions of the commissioner; but in a majority of cases his recommendations met with substantial compliance, so that the Act of 1908 proved fairly effective. It at least created machinery by which information coming to the probate courts under the operation of the direct inheritance tax was systematically gathered by the supervisors of assessors and transmitted to the taxing authorities of the cities and towns. After 1907, therefore, the local taxing authorities were continually supplied with more information about taxable personalty than they had ever possessed before, and in some cases more than they desired to possess. Up to this time the general property tax had been undergoing a gradual process of disintegration; it might have lasted many years longer if no provision had been made for stricter enforcement. But the law of 1908 rapidly produced conditions under which a fundamental change in the system soon became inevitable.

Another factor that contributed to the same result was the growth of private agencies for collecting and distributing information concerning the ownership of corporation stocks. Foreign corporations doing business in Massachusetts were required to file lists of their

stockholders with the secretary of state, and these lists supplied a mine of interesting information. Others could sometimes be reached by examining lists filed in other states, or by purchasing a share of stock and then demanding the right to examine stock books. In recent years, therefore, Massachusetts assessors have been able to procure, if they desire it, a large amount of information concerning taxable corporation stocks; and the result has been a fuller assessment of such property than was formerly possible.

There naturally followed a substantial increase in local assessments of personal property. From $766,600,000 in 1907 the figures advanced to $930,817,000 in 1910, to $1,033,000,000 in 1912, and to $1,195,100,000 in 1915. During the entire period of eight years the total increase was $428,500,000, which was practically equal to the total increase in local assessments of personal property between 1861 and 1907. The following table shows the facts for significant years:

STATISTICS OF TOTAL AND PERSONAL PROPERTY ASSESSMENTS IN MASSACHUSETTS

Year	Total Valuation	Valuation of Personal Property	Percentage of Personal Property
1850	$551,106,000	$201,977,000	36.0
1861	861,500,000	309,400,000	35.9
1874	1,831,600,000	542,300,000	29.6
1881	1,642,200,000	498,300,000	30.2
1907	3,512,600,000	766,600,000	21.8
1915	4,769,900,000	1,195,100,000	25.1

It will be seen that, after declining for fifty-seven years, the proportion of personal property in the total valuations increased from 21.8 per cent in 1907 to 25.1 per cent in 1915. This was a substantial achievement for the supervisors of assessors, but its effect was not what was anticipated. In the first place, the property

thus listed tended to disappear from the tax rolls in a comparatively short time through changes in investments or domicile. Prior to 1908 domiciliary changes had been mostly within the state, and the tax laws had probably driven little property out of Massachusetts, altho they had doubtless prevented a certain amount from coming here. But after that year removals became increasingly frequent, and presently threatened serious injury to the Commonwealth. Precise data on the subject are, of course, very difficult to obtain; but by 1914 it was estimated, and generally believed, that the property removed from Massachusetts in that year was not less than $100,000,000. Whatever the exact amount may have been, it was now large enough to attract public attention, and to affect materially the attitude of lawyers and bankers who were in a position to know what was going on.

The second natural result was to increase greatly the demand for non-taxable investments; and, inevitably, a greater demand began to create a greater supply. The manufacture of non-taxable preferred stocks of Massachusetts corporations became a regular industry; and, as was natural under the circumstances, some of the new securities proved to be of doubtful solidity. In 1907, the number of new corporations organized under the business corporation law was 1,234, having a total capital of $63,372,000. By 1912, the number of such corporations was 1,453, having a capital of $213,466,000. Thereafter there was somewhat less activity among promoters, but both the number of companies and the total capital remained much larger than had ever been known. In 1913, 1914, and 1915, the business corporations organized were, respectively, 1,504, 1,604, and 1,700; while the figures of the total capital were, respectively, $172,103,000, $123,211,000, and $113,-

509,000. Unfavorable business conditions may have been partly responsible for the decrease that followed 1912, but another probable cause was a growing distrust of the new securities.

A third result was to stimulate greatly migration to the favored residential towns. Whenever the assessors in the ordinary city or town, acting upon the information furnished by the supervisors, increased materially the assessment of personal property, some favored town immediately acquired new inhabitants. The average rate of taxation in the state was gradually increasing from about $17 per $1000, the figure for 1907, to $18, and finally $19. But in the wealthy residential towns tax rates were often less than $10 per $1000, and valuations were low. Such conditions could not be permanent.

Some of the developments in particular localities during this period deserve to be mentioned. The town of Norwood in 1908 had a tax rate of $26.50, and at that juncture the assessors received information concerning $2,000,000 of taxable estates, which amounted to more than one and one-half times the existing assessment upon personal property. If matters had taken the usual course, these estates would have been taxed for a sum that would have absorbed fully half of the income, and would presently have been removed from the town. But under exceptionally fortunate and able leadership Norwood decided to try to assess all property at its full value, and thereby reduce the rate of taxation to a tolerable figure which would not drive any citizen away. Accordingly, in 1909 the valuation of real estate was increased from $4,739,000 to $7,680,000, while that of personalty was raised from $1,361,000 to $6,118,000. This resulted in an increase of over 125 per cent in the total valuation, and, together with a

reduction in the tax levy, reduced the rate of taxation to $8.50. For the moment the crisis was averted. But the tax rate was still higher than intangible property could bear permanently; and in subsequent years the assessment of personal property gradually declined, while, despite further increases in the valuation of realty, the tax rate began to increase. In 1915, the assessment upon personalty was half a million less than in 1909, while the tax rate had increased to $12.80. Norwood had shown that exceptional conditions might enable an industrial town to enforce the tax laws without inviting immediate disaster; but its subsequent experience demonstrates that not even such conditions will avail in the long run.

Stimulated by the example of Norwood or urged by the supervisors of assessors, a few other localities sought to enforce strictly the existing tax laws, but with very different results. The city of Malden in 1909 increased the assessment of personalty from $6,734,000 to $12,751,000, and reduced its tax rate from $19.20 to $15.70; but by 1912 the assessment of personalty had declined to $8,438,000, and the tax rate had returned to the figure for 1908. Meanwhile, a number of wealthy residents had changed their domicile, and the city had lost a substantial amount of revenue from corporation taxes. Between 1909 and 1911, the city of Quincy increased the assessment of personalty from $5,813,000 to $7,830,000, and reduced its tax rate from $20.40 to $19.50. But two years later the personal assessment had sunk to $6,254,000, while the tax rate had advanced to $23.70. Salem tried the same experiment between 1909 and 1912, increasing its personal assessment from $9,821,000 to $10,617,000, and reducing its tax rate from $18.60 to $18. But in 1913, nearly a million of personal property disappeared from the tax roll, and the tax rate advanced

to $20.50. Such examples were sufficient to deter other localities from attempting to emulate the example of Norwood.

The other side of the picture may be seen by turning to some of the small residential towns. In 1908, Dover had assessed $470,000 of personal property and $931,000 of realty, and had a tax rate of $9.80. In the following year the assessment of personal property jumped to $4,296,000, and the tax rate fell to $4.30. This suddenly acquired wealth was thereafter retained, and, in fact, increased to $6,925,000 in 1914, in which year the tax rate was $5.50. The town of Rowley in 1912 assessed $170,000 of personal property, and had a tax rate of $13.00. But in the next year the assessment of personalty rose to $2,088,000, and the tax rate decreased to $5.50. Tho subsequently changes occurred, Rowley continued to tax a large amount of personalty, and remained in affluent circumstances.

The most striking case was that of the town of Orleans, which in 1910 had taxed $181,000 of personal property at a rate of $15 per $1000. The next year the assessment of this class of property increased to $968,000, and the tax rate fell to $3. With its reputation thus established, the town continued to increase its taxable wealth until in 1915 the valuation of personalty amounted to $3,941,000, and the tax rate was prevented from reaching the vanishing point only by liberal outlays for improvements. In this case corporation and bank taxes were an especially important factor in the situation. In 1910, Orleans had raised $10,259 from taxes upon property, and had received only $1,085 from the state treasury on account of corporation and bank taxes. In 1911, the levy upon property declined to $4,557, while the revenue from corporation and bank taxes increased to $10,302. In 1914, the taxes upon

property had increased to $11,509, as a result of the inflow of personal estates, while the revenue drawn from the state treasury had risen to $24,883. In that year Orleans enjoyed a revenue of $37,108 from all sources, including polls, whereas in 1910 it had an income of $11,982.

In 1915, Orleans showed a tax rate of $3 per $1000, the lowest in the state, and seven other towns had tax rates that were less than $10; fifty-two towns showed rates ranging from $10 to $14.80; nine cities and one hundred forty-seven towns showed rates ranging from $15 to $19.90; while twenty-six cities and one hundred and eleven towns had rates that ranged from $20 to $30. These inequalities persisted in spite of certain changes in the distribution of the corporation taxes, by which the revenue from mercantile and manufacturing corporations was allotted to the localities where the plants were situated and business carried on. Further changes in the distribution of the corporation and bank taxes might improve somewhat the position of the cities and the ordinary agricultural or manufacturing towns, but the distribution of taxable personal property had become so unequal as to make the situation worse than it had been prior to the introduction of the direct inheritance tax and the enactment of the law creating supervisors of assessors. In 1905, the fourteen towns previously mentioned had received $24.01 of revenue per capita from corporation taxes and the local tax on personal property; while in the rest of the state the revenue was but $5.35 per capita. In 1915, the figures were, respectively, $29.50 and $7.54.[1] Nothing but a

[1] It is worth while to notice the changes that occurred over the whole period from 1865 to 1915. In the former year fourteen favored towns derived a per capita revenue of $6.87 from the stated sources, and the rest of the Commonwealth $5.81. In 1915, the figures were, respectively, $29.50 and $7.54. Thus the fourteen towns had gained $22.63, while the rest of the state had gained $1.73.

radical change in the laws relating to taxation held out any prospect of relief.

From 1907 to 1915 only slight changes occurred in the distribution of the total burden of taxation. Of the total of $112,280,000,[1] polls were assessed for $2,055,000, or 1.8 per cent, which is to be compared with 2.4 per cent for 1907. Liquor licenses and minor business taxes contributed $3,678,000, or 3.3 per cent, which is 1.4 per cent less than in the earlier year. Corporations paid $12,484,000, or 11.1 per cent, as against a percentage of 13.2 eight years earlier. The inheritance tax yielded $3,104,000, or 2.8 per cent of the total, which is an increase of 1.8 per cent over 1907. The taxes assessed upon personal property stood at $22,180,000,[2] which was 19.8 per cent of the total, the proportion of personalty being 3 per cent greater than at the beginning of this period. Finally, real estate taxes contributed $68,776,000, or 61.2 per cent, which was 0.7 per cent less than in 1907.

As was to be expected, the introduction of a tax upon direct inheritances led to renewed efforts to secure a better method of taxing personal property. In response to a petition from leading business interests, and upon the recommendation of the governor, another tax commission was authorized in 1907. In the following year this commission recommended [3] changes in the distribution of the corporate franchise tax, the exemption of future issues of county and municipal bonds, the appointment of supervisors of assessors, and the introduction of a flat tax upon intangible property — the so-called " three-mill tax."

[1] From this total automobile licenses are excluded.

[2] In this item is included $76,644 of revenue paid into the state treasury under the operation of the bond registration tax.

[3] Report of the Commission on Taxation appointed under the provisions of ch. 129 of the resolves of 1907 (Boston, 1908).

The first proposal was promptly carried into effect by a law which provided that thereafter the taxes paid by manufacturing and mercantile corporations and distributed among the several cities and towns should be divided equally between the localities where the stockholders resided and those in which the business was carried on.[1] Since previously the whole amount not retained by the state had been allocated to the towns where the stockholders were domiciled, this act tended to mitigate somewhat the growing inequality between the wealthy residential towns and the rest of the state. Subsequent acts [2] turned over to the towns where business was carried on the whole of the revenue from ordinary business corporations except that part, representing the proportion paid in respect of stock owned by non-residents, which was retained by the Commonwealth. The result was that between 1905 and 1915 the whole amount of revenue received from corporation taxes by the fourteen favored towns previously referred to, decreased from $10.36 per capita to $6.20, whereas in the rest of the state it increased from $1.62 to $1.93. In 1916, a final act [3] provided that the taxes paid by all remaining classes of corporations, except that part representing non-resident stock, should be allocated to the cities and towns where the business is carried on. This leaves only the revenue from the bank tax subject to the old rule of distribution according to the domicile of the stockholders.

The second recommendation of the commission also was accepted. In 1905, the state treasurer had urged that future issues of bonds of the Commonwealth should be exempt from taxation. He showed that of $84,580,000 of registered bonds then outstanding 70 per cent

[1] Ch. 614 of 1908.

[2] Chs. 456 of 1910 and 198 of 1914.

[3] Ch. 299 of 1916.

were held outside the state, 24 per cent were held by corporations and institutions within the state but exempt from taxation thereon, and only 6 per cent were in the hands of individual inhabitants subject to local taxation.[1] The legislature, accordingly, passed an act exempting future issues of state bonds,[2] under which it was estimated that the state gained ¼ of 1 per cent in the interest rate upon the next issue.[3] The cities and towns now came forward with the request that their securities also should be made tax exempt, and the legislature exempted from taxation future issues of county and municipal bonds.[4]

This step was stoutly opposed by most of the remaining advocates of the general property tax. But the practical situation confronting the cities and towns called loudly for a change. No investor would purchase a bond yielding 4 per cent interest with the expectation of paying a tax amounting to 1½ or 2 per cent, and accordingly city and town treasurers withheld from the assessors information concerning the ownership of municipal bonds. In some cases, indeed, they made it their policy to inform investors that this was their practice. Little or no revenue was actually derived from the tax upon municipal bonds, while the fact that such bonds were legally taxable tended to limit somewhat the demand and so to increase the rate of interest. Neither the state nor the towns could expect a reduction of interest equivalent to the average rate of taxation, since so many of the bonds were held by corporations and exempted institutions and so few of the remainder were ever taxed, but it is probable that the broader market opened to public securities in consequence of exemption resulted in an immediate reduction of about ¼ of 1 per cent in the interest basis.

[1] Treasurer's Report, 1905, pp. 6–7.

[2] Ch. 493 of 1906.

[3] Treasurer's Report, 1906, pp. 8–9.

[4] Chs. 464 and 594 of 1908.

In time, the exemption of municipal securities opened the door to serious abuse. The city and town officials soon learned that there was a regular demand for tax-exempt securities just before the first day of April in each year, and began to accommodate their offerings to this situation. In January, February, and March, increasing quantities of short term notes maturing after April 1st began to come into the market, which commanded very low rates of interest. In 1911, the total amount of short term notes issued by the towns was $9,700,000, while by 1915 it had risen to $15,363,000, an increase of approximately 60 per cent. But the striking fact was that the notes issued in January, February, and March, which were those utilized over the first day of April, increased from $2,580,000 to $5,180,000, or more than 100 per cent; while the amount of notes issued in April, May, and June, which could not be so utilized, remained practically stationary, the increase being less than 10 per cent. Complete data for the cities are not available, but the issues of notes recorded in the leading financial papers show the same conditions that developed in the towns. In 1911, these papers reported the issue of $4,667,000 of city notes during the months of January, February, and March, while in 1916, they reported a total of $9,870,000, an increase of over 110 per cent. The March issues, which were especially sought around tax day, rose from $1,460,000 in 1911 to $5,590,000 in 1916, an increase of nearly 300 per cent. Interest rates upon these issues were very low, sometimes falling below 2 per cent, and in some cases reaching such figures as 1.3 per cent, or even ¼ of 1 per cent; while one city actually received a small premium for accommodating an investor with $100,000 of notes maturing just around tax day. Thus an exemption intended to apply to perma-

nent investments in municipal securities came to be a means of facilitating temporary changes in investments with a view to evading taxation.

The third recommendation of the commission resulted in the enactment of the law, already discussed, by which three supervisors of assessors were appointed and provision was made for distributing among the local boards information about property uncovered in the probate courts. This proposal originated in connection with the plan for a flat tax on intangible property, but was presented separately by the commission with the suggestion that the establishment of a three-mill tax upon intangible property " will remove all reasonable ground of objection to the proposal for state supervision of the assessment of property." Since it has been supposed by not a few people that the supervisor law was proposed with the deliberate intention of forcing a crisis in taxation affairs, it is important to recall the fact that it originated in connection with a plan for establishing a fair and practicable method of taxing intangible property.

The fourth recommendation was that intangible property should be exempted from other taxation, and should then be taxed at the uniform rate of three mills upon each dollar of the fair cash value, or $3 per $1000. Since such a tax would be levied at the same rate in every city and town, taxpayers would have no inducement to change their domicile; and since it would substitute a reasonable for a confiscatory exaction, it could be strictly enforced without driving people out of the state. It was based upon a plan which had been tried in Pennsylvania and Maryland with no little success, and was subsequently adopted by Minnesota, Iowa, Rhode Island, and North Dakota. The commission realized, however, that it was open to objec-

tion upon constitutional grounds, and therefore recommended that the legislature secure the opinion of the Supreme Court concerning its constitutionalty. In case the opinion of the court should be adverse, the commission pointed out that the constitution of the Commonwealth ought to be amended.

In due course the legislature submitted the question to the Supreme Court, which pronounced the three-mill tax unconstitutional.[1] Thereupon, an amendment was proposed striking out of the constitution the requirement that taxes must be proportional, but this failed to secure the two-thirds vote required in the House of Representatives. The following year a similar amendment passed the legislature, but with a provision that it should be referred to a special commission for further investigation. This commission submitted to the next legislature an adverse report,[2] which in 1910 resulted in the defeat of the proposed amendment, so that the project of a three-mill tax had to be abandoned.

Opposition to the proposed constitutional amendment was based upon a number of grounds. In the first place, Mr. Hills, Mr. Henry Winn, and most of the local assessors opposed it because they still desired to have all property taxed at the same rate. Many of them would have favored the taxation of personal property at the average rate prevailing throughout the Commonwealth, but they were unwilling to make any further concessions. A second group of remonstrants would have favored the establishment of a uniform tax upon intangible property at some such rate as $10 or $12 per $1000, but contended that a rate of $3 was altogether too low and would tend to increase the burden upon

[1] 195 Mass. 607.

[2] Report of the Commission Appointed to Investigate the Laws Relating to Taxation (December, 1909).

other classes of property. A third ground for objection was the belief that a reduction of the tax upon bonds and upon stocks of foreign corporations would affect adversely the value of non-taxable securities. And, finally, a fourth reason for opposition was the fear that the removal of the requirement that taxes must be proportional would open the door to favoritism and to radical legislation.

Taxation conditions in Massachusetts were then so bad that it is probable that the opposition of the first two classes of remonstrants would not have availed to defeat the amendment. But the arguments advanced by the other objectors raised a number of new questions which seemed to many people to require further time for consideration, and divided the forces which otherwise might have favored a better method of taxing intangible property.

VI

In 1911, Governor Foss directed the attention of the legislature to the subject of taxation,[1] and recommended the establishment of a state income tax and the adoption of a better method of taxing wild and forest lands. Prior to 1910 it would probably have been useless to propose in Massachusetts such a measure as a state tax upon incomes, since here, as elsewhere, the people had long been accustomed to the taxation of property and were inclined to regard an income tax as inquisitorial. But the situation suddenly changed when congress submitted to the states the sixteenth amendment to the federal constitution. This brought up for consideration the whole question of income taxation, and required every one in active political life to

[1] See H. Doc. 1900 of 1911. Also Sen. Docs., 255 of 1912 and 39 of 1913.

define his attitude upon it. Those who advocated immediate ratification of the amendment could not urge that a state income tax would be inquisitorial; while those who opposed such ratification usually did so upon the ground that the income tax should be reserved for the states, and were not in a position to argue that Massachusetts ought not to employ it. Governor Foss's proposals, therefore, met with very general support; his amendment authorizing a special forest tax was immediately adopted, and nothing but differences of opinion concerning the proper form of an income tax amendment prevented acceptance of his other recommendation.

These differences, however, proved difficult to harmonize; the more so because they offered a convenient reason for opposition to any change in the method of taxing intangible property. They turned chiefly upon the questions, whether the amendment should authorize a progressive income tax, and whether it should provide that property taxed upon its income should be exempted by constitutional requirement from other taxation. In 1912 and 1913, as in 1911, controversy over these points was chiefly responsible for the defeat of proposed income tax amendments.

But while such controversy continued, conditions were becoming increasingly serious. Orleans had a $3 tax rate, other favored towns were receiving large accessions of taxable personalty every spring, and it was becoming evident to the people of the rest of the state that they could not hope to retain even their existing revenue from intangible property. Moreover, removals of large amounts of personalty to neighboring states were becoming increasingly common, and were causing well-founded alarm. These conditions finally led the mayor and the assessors of Boston to favor the income tax project, and elsewhere tended to disintegrate the

opposition of local assessors. Moreover, the tax commissioner had become convinced of the necessity of reform, and the annual reports of his department were dealing vigorously with the subject in a manner which could not fail to impress both the legislature and the public. Finally, Wisconsin in 1912 introduced a state income tax which proved an immediate success and furnished an impressive object lesson to Massachusetts.

In 1911, at the suggestion of Governor Foss, the tax commissioner instituted an investigation of the data furnished by the inheritance tax returns, and found that in estates passing through the probate courts the personal property amounted to between three and four times as much as the realty. From September 1, 1907, to August 31, 1908, the returns of all estates, whether taxable or not, showed that the real property brought under review was valued at $22,462,000 and the personalty at $70,715,000. From September 1, 1908, to December 1, 1911, the returns showed real property amounting to $97,734,000 and personal property valued at $368,741,000. Upon the assumption that the total personalty of the inhabitants of Massachusetts was more than three times the total realty, and that at least one-half of the personalty was taxable under existing law, the tax commissioner estimated that there must be from $4,000,000 to $5,000,000 of taxable personal property within the Commonwealth, whereas the local assessors in that year had assessed but $984,300,000.[1] Up to that time it had been possible to argue that, altho much intangible property evaded taxation, the assessors were able to secure the greater part of it. But thereafter it was usually accepted as a fact that the untaxed personalty, chiefly intangibles, was three and perhaps four times as great as the amount actually

[1] See Sen. Doc. 255 of 1912, pp. 2–3.

taxed. This tended to give a somewhat new turn to discussions of the tax problem.

In 1914, the need for a change in the method of taxing intangible property become so apparent that, without waiting for a constitutional amendment, the legislature established a registration tax upon certain classes of bonds.[1] It provided that holders of bonds secured by mortgage upon tangible property actually taxed in Massachusetts or elsewhere might register such bonds with the tax commissioner and pay a registration tax of three mills on the dollar. Bonds so registered were to become exempt from other taxation. As a property tax, of course, this measure would have been wholly invalid, but the legislature acted upon the theory that it might be upheld as a valid excise. Doubts about the constitutionality of the measure were sufficient to prevent most investors from taking advantage of the act, but substantial amounts of bonds were registered with the tax commissioner up to the repeal of the law by the Income Tax Act of 1916.

Agitation for a better method of taxing intangible property was becoming increasingly active and influential. In 1908, a committee of prominent citizens was organized to advocate the adoption of the three-mill tax, and the following year the Boston Chamber of Commerce took up the subject in vigorous fashion. In 1910, a state-wide organization known as the Merchants' and Manufacturers' Committee on the Tax Laws came into the field, so that the movement was no longer confined to Boston and its immediate vicinity. In 1914, the Massachusetts Tax Association was organized, with Lucius Tuttle as its first president and a board of directors representing many of the important business interests of the Commonwealth as well as

[1] Ch. 761 of 1914.

organized labor. Upon Mr. Tuttle's death, Ex-Governor Curtis Guild succeeded to the presidency, and an active campaign was instituted under most favorable auspices. With the coöperation of Governor Walsh and the tax commissioner's department, a constitutional amendment permitting the levy of a proportional income tax, but not requiring that property taxed upon its income *must* be exempted from other taxation, was drafted and submitted to the legislature which ratified it by decisive votes in both branches. This amendment passed the legislature of 1915 even more decisively, and in the following November was adopted at the polls by an overwhelming vote. The way was now open for a reform of the tax on personal property.

VII

The legislature of 1915, anticipating the ratification of the amendment, authorized the appointment of a special commission on taxation which was instructed to investigate the advisability of changes in existing tax laws and to draft an income tax act. In January, 1916, this commission [1] submitted the draft of a well-considered act which, under the impetus of the overwhelming ratification of the income tax amendment at the polls, was enacted after much discussion but with little effective opposition.

The income tax law of 1915 was designed primarily to provide a better method of taxing intangible property. It therefore exempts such property from local taxation, and imposes upon its income a tax of 6 per cent, from which, however, $300 of taxable income is exempt for persons whose total income from all sources does not exceed $600. But for the tax levied since 1646 upon

[1] Report of the Special Commission on Taxation (1916).

personal, trade, and professional incomes, the law of 1916 might have been confined to the income from intangible property. Since, however, that tax was in existence and was not likely to be repealed, it was necessary for the new act to take cognizance of this fact. It would have been clearly undesirable to have two income taxes: one levied by the state and strictly enforced; the other levied by local assessors and almost a dead letter. The obvious and expedient solution was the transfer of the old local tax to the Commonwealth, and therefore the law of 1916 includes a tax upon income from personal, trade, and professional earnings. Finally, the act imposes a tax of 3 per cent upon profits derived from dealings in intangible personal property.

The new law, therefore, is much narrower in scope than the Federal income tax, which applies to income from all sources, and somewhat narrower than the Wisconsin income tax, which reaches practically all incomes except dividends from certain classes of corporations. It follows, however, what was undoubtedly the line of least resistance for Massachusetts. There was no popular demand for a new method of taxing real estate and tangible personal property, and the problem before the legislature was that of finding a better method of taxing intangible personalty. The result is a perfectly logical adjustment by which personal, professional, and trade incomes, and income from intangible property are taxed by the state; while tangible property continues to be subject to local taxation upon its capital value.

Following antecedent practice, the Massachusetts income tax is imposed upon "inhabitants" of the Commonwealth. It is, therefore, a personal tax payable by people who are inhabitants of the Commonwealth at any time between the first day of January and the thirtieth day of June in any year. Persons who are

not inhabitants within the meaning of that word as defined by the Supreme Court are not subject to the tax, even tho they may carry on business in Massachusetts; and, upon the other hand, inhabitants of Massachusetts are taxable upon income derived from business carried on outside of the Commonwealth. The working of this feature of the law will be watched with interest.

The tax upon the income from intangible property substitutes a reasonable and uniform tax for one levied at rates that ranged from $3 to $30 per $1000. Under the old system many people evaded taxation, some compounded with the local assessors for a reasonable tax, and still others paid one-fourth or one-third of their incomes. The intention is that the new tax shall be enforced upon every one, and the act accordingly provides adequate methods of administration.

The first thing, of course, is the requirement of sworn returns of income from taxable intangible property, which must be made on or before the first day of March in each year and relate to the income of the preceding calendar year. Failure to file such a return renders a taxable person liable to an additional tax of $5 for every day he is in default. Continued failure after receipt of a notice from the tax commissioner makes a person liable to be assessed by the commissioner for twice the amount of his taxable income, and subjects him to a further penalty of fine, imprisonment, or both. Conviction for refusal to make a return works the forfeiture of a person's right to hold public office within the Commonwealth for such a period, not exceeding five years, as the court may determine. Similar penalties are provided for making fraudulent returns, the law making no distinction between persistent refusal to file a return and the filing of a return found to be fraudulent. Since

the enforcement of the act is to be wholly in the hands of the state tax department, these penalties should prove adequate.[1] No careful lawyer or responsible banker will advise a client or customer to trifle with the new law; and there is every indication that the income tax, with its requirement of sworn returns, has been accepted by the business community, and will be strictly complied with. It will not be people of wealth, but those of smaller means and little or no business experience, who will cause most difficulty.

The tax upon the income of intangible personalty applies only to such property as was formerly subject to taxation; thus incomes from mortgages upon taxable Massachusetts real estate, deposits in savings banks, tax-exempt state and municipal bonds, national bank stock, and the stock of Massachusetts corporations, are all exempted. The same is true of income from so-called "stocks" of most of the voluntary associations which are so common in Massachusetts. In general, owners of securities will find that they are taxable only upon income derived from sources that were taxable under the old law. About the only exception is found in the case of trusts or other voluntary associations not owning real estate exclusively, or shares in Massachusetts corporations, and not doing business principally in Massachusetts.

A very important and interesting feature of the tax on the income from intangibles is that it provides for a deduction on account of indebtedness. The property tax had authorized such deduction only against certain credits, that is, it allowed the taxpayer to deduct money he owed from debts due him. The new law does not

[1] The act, of course, makes suitable provision for preventing disclosure of the details of tax returns. It provides, however, that the names of the persons who have filed returns shall be open to public inspection. It permits taxpayers to file their returns either with the tax commissioner or with the income tax assessor of the district in which they live.

indeed permit the deduction of interest paid upon any and all debts from the income received by the taxpayer from taxable intangible property. To do so would have been wrong in principle and would have opened the door to wholesale evasion. Deduction of all debts from taxable income is necessary as well as proper under a general income tax applicable to income from all sources, but under a partial income tax it is manifestly impossible. The new law, therefore, follows what may be called the principle of granting the taxpayer a proportional offset or deduction. It provides in effect that, from the income received from taxable intangible property, the taxpayer may deduct such a proportion of the interest paid on his total indebtedness as the income which he derives from taxable intangible property bears to his total income.

The provisions of the law at this point are necessarily complicated, but their practical operation may be shown by the three following cases: a person receiving $99,000 of income from taxable intangible property and $1000 of income from other sources may deduct from his taxable income derived from intangible property 99 per cent of the interest paid upon his indebtedness; a person receiving $50,000 of income from taxable intangibles, and $50,000 from other sources will be able to deduct one-half of the interest which he pays upon his debts; and, finally, a person receiving $1000 from taxable intangible property and $99,000 from other sources will be permitted to deduct but one per cent of the interest upon his obligations. These cases do not take account of all the provisions of the law and are intended merely to illustrate the principle which is eminently fair and in practice should offer no serious difficulties.

Another departure from former practice is the provision which grants an exemption of $300 of income from

intangible property to persons whose total income from all sources does not exceed $600 during the year in respect of which the tax is assessed. Under the old law a person owning taxable securities received no exemption, and in many cases where small estates were uncovered in the probate courts great hardship arose. There was, indeed, a provision that the assessors might exempt the polls and any portion of the estates of persons who by reason of age, infirmity, or poverty were deemed to be unable to contribute toward the public charges. But this did not meet the needs of the case, since a person with a capital of five or ten thousand dollars was not in a position to plead " poverty." Thus it came about that persons deriving small incomes from taxable property were frequently taxed for twenty or twenty-five per cent of such incomes. The new law not only reduces the rate of taxation to 6 per cent of the income from intangibles, but provides an exemption of $300.

The tax imposed upon income derived from annuities and from " professions, employments, trade, or business " will be levied at the uniform rate of 1½ per cent. This is a trifle less than the average of the local tax rates to which such incomes were subject under the old law. It is expected, however, that the assessments made by state authorities will be so much more complete that the revenue will be considerably greater than formerly. The new law continues the exemption of $2000 of professional, personal, or trade incomes, and provides the further exemption of $500 for a married person and $250 for each child under the age of eighteen years, or for a parent dependent upon the taxpayer for support; but provides that the total exemption shall in no case exceed $3000. Income from annuities received no exemptions under the old law, but under the new has an exemption

of $300 if the total income of the annuitant from all sources does not exceed $600.

In its provisions concerning professions, employments, trade, or business, the new law is noteworthy because it carefully defines taxable income. The old law merely provided that the "income" from such sources should be taxed, and that income derived from property subject to taxation should not be taxed. The Supreme Court held, however, that this permitted the taxation of the entire income of a merchant even tho his merchandise might be subject to local taxation,[1] so that in fact double taxation of merchandise and the income derived therefrom was possible. The new law imposes the tax upon the net income of a business, determined substantially as any good accountant would compute it; and then provides that a taxpayer may deduct from such net income a sum equal to 5 per cent of the assessed value of the tangible property, real and personal, owned by him and used in the business.

The tax of 3 per cent imposed upon profits derived from dealings in intangible personal property is levied upon all inhabitants of the Commonwealth whether or not they are engaged in the business of dealing in such property. It also applies to dealings in all classes of securities, taxable and non-taxable. The tax is to be levied upon the "excess of the gains over the losses," and is to be assessed annually. But the law provides that trustees or other fiduciaries shall be assessed at the time a trust is terminated unless it continues for more than five years, in which case the assessment shall be made at least in every fifth year.

This provision of the act occasioned considerable discussion. Without it gains from dealings in intan-

[1] Wilcox v. Middlesex County Commissioners, 103 Mass. 544.

gible property would have been taxable at the rate of 1½ per cent if they formed part of the income of any business carried on by inhabitants of the Commonwealth; but they would not have been taxable to individuals who speculated in securities. Now an income tax differs from a property tax in that it exempts from taxation property yielding no income, which, if it has any value, would be taxable under a property tax. It is obviously the intention of the new law that persons who speculate in non-dividend-yielding stocks shall be taxed upon their speculative gains, even tho they may not be engaged in the business of buying or selling intangible property. That the rate was placed at 3 per cent instead of 1½ per cent was perhaps due in part to the desire to tax the " speculator "; but it is also explicable on the ground that intangible property is now exempt from taxation as property, so that persons who deal in it may fairly be required to pay a somewhat heavier rate than persons who deal in merchandise or other taxable tangible property.

As already stated, the administration of the income tax is placed in the hands of the state tax commissioner. It was not to be expected that the tax would work well if administrated in approximately three hundred and fifty different ways by approximately three hundred and fifty local boards of assessors; and Massachusetts acted wisely in turning the work over to the Commonwealth. During the fifty years of its existence, the tax commissioner's department has been administered in a manner that has commanded general confidence, and all that needed to be done was to add to its equipment a new bureau charged with the assessment and collection of the income tax.

The tax commissioner accordingly is authorized to appoint an income tax deputy who will have general

charge of the taxation of incomes. He is also to divide the state into districts, and to appoint an income tax assessor for each district. Thus the administration will be in some measure localized, but the number of districts will probably not exceed ten or twelve, and responsibility will rest with a single ultimate authority, the state tax commissioner. Under this arrangement there will undoubtedly be intelligent and even-handed enforcement of the law in every city and town, so that taxpayers will have the assurance that all citizens are being treated alike. The tax commissioner is authorized to make necessary rules and regulations for the assessment and collection of the income tax, and will undoubtedly be given a generous allowance for necessary expenses. Upon the administrative side, therefore, the law of 1916 seems to make adequate provision for strict enforcement of the tax upon incomes.

Information at the source is also required in certain cases. Every employer of labor must report to the tax commissioner the names and addresses of all regular employees who are inhabitants of Massachusetts, and have received wages, salaries, or other compensation in excess of $1800 during the previous calendar year. Also corporations doing business in the Commonwealth and voluntary associations having transferable shares are, unless their stocks fall within the class of tax-exempt securities, required to report the names of their shareholders. They are further required to report the names of all inhabitants of Massachusetts to whom they have paid annuities or interest upon their bonds, notes, or other evidences of indebtedness, except interest on coupon bonds and incomes exempt from taxation under the act. Neither of these requirements is unduly burdensome, so that no such difficulties will arise as have developed under the federal income tax.

A final provision of interest is that concerning the taxation of personal property in the year 1917 when the new law goes into effect. Since intangible property is hereafter to be exempt from local taxation, many taxpayers will be entitled to reductions of the local assessments upon their personalty; but since tangible personal property today is frequently under-assessed, it is important that such persons should not receive greater reductions than they are entitled to. The law, therefore, provides that in 1917 no local assessment of personal estate shall be reduced below the amount assessed in 1916, unless the taxpayer makes a return of his tangible personal property. This means that, in order to benefit by the exemption of intangible property or income formerly subject to local taxation, taxpayers must file with their local assessors in 1917 a return of their taxable personalty. For the average citizen this will mean household furniture in excess of $1000, automobiles, carriages, horses, and live stock; and for merchants and manufacturers it will mean a return of merchandise and machinery. In this manner there will be secured a much fuller assessment of tangible personalty than ever before; so that the new law, by providing a just and practicable method of taxing intangibles, will remove many of the difficulties that have hitherto attended taxation of tangible personalty. In this respect it is probable that the experience of Massachusetts will be the same as that of the few other states that have adopted fair and efficient methods of taxing intangible property.

The new law is calculated to yield a revenue somewhat greater than is now derived from intangible property and taxable incomes, and there can be little doubt that it will fulfil expectations. It should be remembered, however, that Massachusetts has been taxing

some $500,000,000 or $550,000,000 of intangible personalty, so that the results of the new act cannot be as spectacular as those secured in other states where intangible property had formerly contributed little or nothing.

The intangible property taxed in 1914 probably paid somewhat less than the average rate of taxation because of its concentration in wealthy towns. If we estimate that it paid $16 per $1000, it yielded a revenue of $8,000,000 to $8,800,000. The amount of incomes now taxed is not known, but it probably does not exceed $20,000,000, and the taxes collected from this source cannot exceed $350,000 or $400,000. The new income tax, therefore, must yield from eight to nine millions of dollars in order to offset the loss of revenue occasioned by the exemption of intangible property and income from local taxation. It ought to do so, since all the estimates show that there are in the state enough taxable intangibles, and professional, personal or trade incomes, to give the desired result. This calculation assumes that the exemption of intangibles and income from local taxation will decrease local assessments of personal property by some $550,000,000. But this will not be the case, because of the provision that such assessments shall not be less in 1917 than in 1916 unless taxpayers bring in returns of their taxable property. The law, therefore, is certain to produce a larger revenue from tangible personal property, an important factor of safety in calculations of the probable result of the new income tax.

Greatly in favor of the new act is the fact that it was adopted only after some years of serious discussion which familiarized the people of the Commonwealth with the evils of the existing system and the need of having reasonable and enforcible tax laws. It repre-

sents a fairly general consensus of opinion reached after thoro consideration, and therefore promises to solve the most vexatious of taxation problems. This has been the experience of other states that have introduced reasonable methods of taxing intangible property, and there is little ground for doubt about the result in Massachusetts.

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